



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0091; FRL- 9803-3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, State Board Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Delaware State Implementation Plan (SIP) submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on January 11, 2013. The SIP revision addresses requirements of the Clean Air Act (CAA) for all criteria pollutants of the national ambient air quality standards (NAAQS) in relation to State Boards. EPA is approving this SIP revision in accordance with the requirements of the CAA.

DATES: This rule is effective on [insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse written comment by [insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2013-0091** by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov.

C. Mail: **EPA-R03-OAR-2013-0091**, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2013-0091**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special

characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 128 of the CAA requires SIPs to comply with the requirements regarding State Boards. Section 110(a)(2)(E)(ii) of the CAA also references these requirements. Section 128(a) of the CAA requires SIPs to contain provisions that: (1) Any board or body which approves permits or enforcement orders under the CAA have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflict of interest by members of such

board or body or the head of an executive agency with similar powers be adequately disclosed.

The requirements of CAA section 128(a)(1) are not applicable to Delaware because it does not have any board or body which approves air quality permits or enforcement orders. The requirements of CAA section 128(a)(2), however, are applicable to Delaware because DNREC's cabinet level Secretary (i.e., the head of an executive agency) makes the referenced decisions.

II. Summary of SIP Revision

On January 11, 2013, DNREC submitted a SIP revision that addresses the requirements of CAA sections 128 and 110(a)(2)(E)(ii) for all criteria pollutants NAAQS in relation to State Boards. Delaware's statutes governing the relevant section 128 requirements are found in 29 Delaware Code Chapter 58, "Laws Regulating the Conduct of Officers and Employees of the State." The conduct of the DNREC Secretary, and that of his employees, is subject to the requirements of 29 Delaware Code Chapter 58. State employees are required to follow the laws in Chapter 58 regarding employee conduct. Delaware is incorporating only certain relevant provisions of Chapter 58 into this SIP revision.

Chapter 58, Subpart I, State Employees', Officers' and Officials' Code of Conduct
Section 5804. Definitions.

Section 5805. Prohibitions relating to conflicts of interest.

- (a) Restrictions on exercise of official authority.
- (b) Restrictions on representing another's interest before the State.
- (c) Restrictions on contracting with the State.

- (f) Criminal sanctions.
- (g) Contracts voidable by court action.
- (h) Exceptions for transportation contracts with school districts.

Section 5806. Code of conduct.

- (c) Financial interest in any private enterprise directly involved in decisions.
- (d) Financial interest in any private enterprise subject to the regulatory jurisdiction.

Chapter 58, Subpart II, Financial Disclosure

Section 5812. Definitions.

Section 5813. Report disclosing financial information.

Section 5813A. Report disclosing council or board membership.

Section 5815. Violations; penalties; jurisdiction of Superior Court.

III. EPA's Analysis of Delaware's SIP Revision

CAA sections 128 and 110(a)(2)(E)(ii) require that each state's SIP demonstrates how State Boards who approve CAA permits or enforcement orders disclose any potential conflicts of interest. DNREC approves all CAA permits and enforcement orders in Delaware. DNREC is an executive agency that acts through its Secretary or a delegated state employee subordinate. DNREC submits that public disclosure of any potential conflict in the SIP as required by CAA sections 128 and 110(a)(2)(E)(ii) is satisfied by 29 Delaware Code Chapter 58.

Chapter 58 applies to state employees and prohibits their exercise of official duties when there is a conflict of interest. The SIP revision reflects this existing law and demonstrates that Delaware

complies with the requirements of CAA sections 128 and 110(a)(2)(E)(ii).

IV. Final Action

EPA is approving the Delaware SIP revision that addresses the requirements of CAA sections 128 and 110(a)(2)(E)(ii) for all criteria pollutants NAAQS. The SIP revision, which consists of relevant provisions of 29 Delaware Code Chapter 58, meets the requirements of CAA sections 128 and 110(a)(2)(E)(ii). EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of today’s Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on [insert date 60 days from date of publication in the Federal Register] without further notice unless EPA receives adverse comment by [insert date 30 days from date of publication in the Federal Register]. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided

that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP which meets CAA sections 128 and 110(a)(2)(E)(ii) is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date

of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the SIP revision for purposes of meeting the CAA sections 128 and 110(a)(2)(E)(ii) requirements for all criteria pollutants of the NAAQS in relation to State Boards, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: April 3, 2013.

W. C. Early,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart I-- Delaware

2. Section 52.420 is amended by:

a. Revising table heading in paragraph (c) to read “EPA-Approved Regulations and Statutes in the Delaware SIP.”

b. The Table in paragraph (c) is amended by adding entries for Chapter 58 at the end of the table.

c. The table in paragraph (e) is amended by adding an entry for “CAA sections 128 and 110(a)(2)(E)(ii) requirements in relation to State Boards for all criteria pollutants” at the end of the table.

The additions and revisions read as follows:

§ 52.420 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DELAWARE SIP

State regulation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *	* *			
Chapter 58	Laws Regulating the Conduct of Officers and Employees of the State			
Subpart I	State Employees’, Officers’ and Officials’ Code of Conduct			

State regulation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 5804	Definitions	12/4/12	[<u>Insert Federal Register publication date</u>] [<u>Insert Federal Register page number where the document begins and date</u>]	
Section 5805	Prohibitions relating to conflicts of interest	12/4/12	[<u>Insert Federal Register publication date</u>] [<u>Insert Federal Register page number where the document begins and date</u>]	Paragraphs (a), (b), (c), (f), (g), (h)
Section 5806	Code of conduct	12/4/12	[<u>Insert Federal Register publication date</u>] [<u>Insert Federal Register page number where the document begins and date</u>]	Paragraphs (c) and (d)
Subpart II	Financial disclosure			
Section 5812	Definitions	12/4/12	[<u>Insert Federal Register publication date</u>] [<u>Insert Federal Register page number where the document begins and date</u>]	
Section 5813	Report disclosing financial information	12/4/12	[<u>Insert Federal Register publication date</u>] [<u>Insert Federal Register page number where the document begins and date</u>]	Paragraphs (a), (b), (c) and (d)
Section 5813A	Report disclosing council and board membership	12/4/12	[<u>Insert Federal Register publication date</u>]	Paragraphs (a), and (b)

State regulation	Title/subject	State effective date	EPA approval date	Additional explanation
			<u>[Insert Federal Register page number where the document begins and date]</u>	
Section 5815	Violations; penalties; jurisdiction of Superior Court	12/4/12	<u>[Insert Federal Register publication date]</u> <u>[Insert Federal Register page number where the document begins and date]</u>	Paragraphs (a), (b), (c) and (d)

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(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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CAA sections 128 and 110(a)(2)(E)(ii) requirements in relation to State Boards for all criteria pollutants	Statewide	1/11/13	<u>[Insert Federal Register publication date]</u> <u>[Insert Federal Register page number where the document begins and date]</u>	

[FR Doc. 2013-08926 Filed 04/16/2013 at 8:45 am; Publication Date: 04/17/2013]